

Wholeifbepro

Added Front Page

Solicitation (IFB, RFP, RFQ) No. _____

Bidder/Offeror: _____

ATTENTION

Federal Employer Identification Number or alternate identification number (e.g., Social Security Number) is used for internal processing, including bid tabulation.

Enter ID number here: _____

Pursuant to N.C.G.S. 132-1.10(b) this identification number shall not be released to the public.

This page will be removed and shredded, or otherwise kept confidential,
before the procurement file is made available for public inspection.

STATE OF NORTH CAROLINA NC Education Lottery	REQUEST FOR QUOTES NO. Q-61001	
	Quotes will be publicly opened: October 31, 2008	
	Contract Type: Open Market	
Refer <u>ALL</u> Inquiries to: Michele Goff Telephone No. (919) 301-3433	Commodity: SANDERS CONFERENCE ROOM EXPANSION	
E-Mail: mgoff@lotterync.net	Using Agency Name: NC Education Lottery	
(See page 2 for mailing instructions.)	Agency Requisition No. PR 8424433	
<i>Within two days after notification of award of a contract, the vendor must register in NC E-Procurement@Your Service (http://vendor.ncgov.com.)</i>		

NOTICE TO OFFEROR

Quotes, subject to the conditions made a part hereof, will be received at this office ((2100 Yonkers Road) until **2:00 p.m.** on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Refer to page 2 for proper mailing instructions.

Quotes are subject to rejection unless submitted on this form.

EXECUTION

In compliance with this Invitation for Bids, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this bid, I certify that this bid is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony. I also certify that I have read the North Carolina Lottery Act, in particular, G.S. 18C-151(C) as it relates to the conduct of background investigation of vendors. This information can be found on our website at: <http://lottery.nc.gov/uploads/fulllotterybill.pdf>

Failure to execute/sign quote prior to submittal shall render quote invalid. Late quotes are not acceptable.

OFFEROR:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO (800)
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

Offer valid for 45 days from date of opening unless otherwise stated here: ____ days (See Instructions for Quotes, Item 5). Prompt Payment Discount: _____ % _____ days (See Instructions for Quotes, Item 6).

ACCEPTANCE OF QUOTE

If any or all parts of this quote are accepted, an authorized representative of NC Education Lottery shall affix their signature hereto and this document and the provisions of the Instructions for Quotes, special terms and conditions specific to this Request for Quotes, the specifications, and the North Carolina General Contract Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful offeror.

<u>FOR NC EDUCATION LOTTERY USE ONLY</u>	
Offer accepted and contract awarded this ____ day of _____, 20____, as indicated on attached certification, by _____ (Authorized representative of NC Education Lottery).	

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

It is desirable that all responses meet the following requirements:

- All copies are printed **double sided**.
- All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
- Unless absolutely necessary, all bids and copies should **minimize or eliminate use of non-recyclable or non reusable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.

MAILING INSTRUCTIONS: Mail only one fully executed quote document, unless otherwise instructed, and only one quote per envelope. Address envelope and insert quote number as shown below: It is the responsibility of the offeror to have the quote in this office by the specified time and date of opening.

<u>DELIVERED BY US POSTAL SERVICE</u>	<u>DELIVERED BY ANY OTHER MEANS</u>
QUOTE NO. Q _____ NORTH CAROLINA EDUCATION LOTTERY 2100 YONKERS ROAD RALEIGH, NC 27604	QUOTE NO. Q _____ NORTH CAROLINA EDUCATION LOTTERY 2100 YONKERS ROAD RALEIGH, NC 27604

TABULATIONS: Verbal tabulations of quotes and award information can be obtained by calling the purchaser listed on the first page of this document.

TRANSPORTATION CHARGES: FOB Destination. Freight charges must be included in the price of each item listed, not listed as a separate item.

ATTENTION: This is an e-procurement solicitation. See paragraph #19 of the attached General Contract Terms and Conditions.

The Terms and Conditions made part of this solicitation contain new language necessary for implementation of North Carolina's Statewide e-procurement initiative.

It is the offeror's responsibility to read these terms and conditions carefully and consider them in preparing the offer. By signature, offeror acknowledges acceptance of all terms and conditions, including those related to e-procurement.

General information on the e-procurement service can be found at:

http://www.ncgov.com/eprocurement/asp/section/ep_index.asp.

AWARD CRITERIA: As provided by Statute, award will be based on the lowest and best bid (most advantageous to the State) as determined by consideration of:

- 1) Price
- 2) General reputation & performance capabilities of bidder
- 3) Suitability of items for intended use
- 4) Conformity with specifications herein and drawings
- 5) Conformity with terms & conditions of this Request for Quotes
- 6) Delivery/installation offered
- 7) 9) Responses from references

AWARD OF CONTRACT: It is the general intent to award this contract to a single overall bidder on all items. The right is reserved, however, to make awards on the basis of individual items or groups of items, if such shall be considered by the State to be most advantageous or to constitute its best interest. Bidders should show unit prices, but are requested also to offer a lump sum price.

BID EVALUATION: Bids are requested on the expansion project hereinafter specified or like items similar in design, function and performance. The State reserves the right to reject any bid on the basis of function, compatibility with user's intended use or applications as well as costs. Bidder(s) are cautioned that any/all information furnished or not furnished on this bid may be used as a factor in determining the award of this contract.

CLEAN-UP: Upon completion of the installation, the contractor shall remove and properly dispose of all waste and debris from the installation site. The contractor shall be responsible for leaving the installation area clean and ready to use.

DELIVERY/INSTALLATION: Please enter here the earliest date thereafter you can complete delivery/installation: _____. The State reserves the right to make the delivery/installation offered a factor in the award of any contract resulting from this Request for Quotes.

MANDATORY SITE VISIT: It shall be **MANDATORY** that each bidder representative be present for a pre-bid site visit on **Wednesday, October 22, 2008**. Attendees are to meet promptly at **10:00 am EST**. All attendees must sign in at this time. The purpose of this visit is for all prospective bidders to acquaint themselves with the conditions and requirements of the task to be performed. Attendees will be apprised of all conditions of installation and should take any necessary measurements. Bidders shall stay for the duration of the site visit. No allowances will be made for unreported conditions which a prudent bidder would recognize as affecting the work called for or implied by this quote.

FAILURE TO COMPLY WITH THIS REQUIREMENT WILL RESULT IN REJECTION OF YOUR QUOTE.

In order to confirm your attendance at scheduled site visit, contact Michele Goff at 919-301-3433.

NAME OF ATTENDEE IN ATTENDANCE AT SITE VISIT: _____

Bidder is cautioned that any information released to attendees during site visit, other than that involving the physical aspects of the facility referenced above, and which conflicts with, supersedes, or adds to requirements in this Request for Quotes, must be confirmed by written addendum (issued by Purchasing) before it can be considered to be a part of this Request for Quotes document. Bidder bidding otherwise does so at his own risk.

QUESTIONS: Questions concerning the specifications in this Request for Quotes will be received until **October 27, 2008, 4:00 pm EST**. NO QUESTIONS WILL BE ACCEPTED AFTER THIS DATE AND TIME. **All questions must be submitted in writing** to Michele Goff at fax (919) 301-3620 or mgoff@lottery.nc.net. A summary of all questions and answers will be posted on the NCEL internet site only as an addendum, located under the requisition number being modified at http://lottery.nc.gov/vendor_information.aspx

NOTE: IT IS THE OFFEROR'S RESPONSIBILITY TO ASSURE THAT ALL ADDENDA HAVE BEEN REVIEWED AND, IF NEED BE, SIGNED AND RETURNED.

REFERENCES: List below references where your company has provided services similar to that proposed. The State reserves the right to require upon its request a list of users of these services. The State may contact these users to determine quality level of the offered services. Such information may be considered in the evaluation of the bid.

<u>SITE</u>	<u>DATE OF DELIVERY</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE #</u>
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PRIME VENDOR CONCEPT: The State of North Carolina will award any contract that may be issued as a result of this Request for Quotes to a single Prime Vendor. The prime vendor must assume responsibility for all products and services in support of the requirements. Vendors who submit proposals as prime contractors may wish to provide all of the proposed products and services directly, or provide certain elements directly and the remainder through subcontractors. Under the prime contractor arrangement, subcontractors are allowed and encouraged. However, the prime contractor must provide positive evidence that it will be responsible for all products and services provided to satisfy the requirements and specifications of this RFQ.

WARRANTY: Bidder guarantees all materials to be free from any and all defects in material and workmanship and warrants same for a period of one year from date of installation. Such warranty to cover the cost of all defective parts replacement, labor, freight, and technicians travel at no additional cost to the State.

FURNISH, DELIVER AND INSTALL COMPLETE PROJECT:

ITEM	DESCRIPTION	SUBTOTAL
1.	Materials for complete job, per specifications.	\$
2.	Labor/installation for complete job, per specifications.	\$

TOTAL BOTH ITEMS \$ _____

FURNISH, DELIVER AND INSTALL OPTION A:

ITEM	DESCRIPTION	SUBTOTAL
1.	Materials for Option A, per specifications.	\$
2.	Labor/installation for Option A, per specifications.	\$

TOTAL BOTH ITEMS \$ _____

FURNISH, DELIVER AND INSTALL OPTION B:

ITEM	DESCRIPTION	SUBTOTAL
1.	Materials for Option B, per specifications.	\$
2.	Labor/installation for Option B, per specifications.	\$

TOTAL BOTH ITEMS \$ _____

SANDERS CONFERENCE ROOM EXPANSION SPECIFICATIONS

I. INTRODUCTION

- A.) The purpose of this solicitation is to select a qualified contractor to renovate and expand the size of the Sanders Conference Room. This will include but is not limited to:
- 1.) A/V System – experience in A/V equipment installation
 - a. Move A/V system to new location in ceiling
 - b. Move A/V system wall plate to new location
 - 2.) Carpet/Flooring
 - a. Remove existing tile
 - b. Install carpet where needed; match at rear of room. New carpet - no patch (where walls were). If unable to match, replace all.
 - 3.) Electrical
 - a. Install new light switches where needed
 - b. Install new exit signs where needed
 - 4.) Engineering Design
 - a. Provide new drawing of build-out
 - 5.) Fire Suppression
 - a. Move two (2) horn strobes
 - b. Move one (1) fire extinguisher
 - 6.) General
 - a. Demo two (2) closets at front of Sanders Conference Room
 - b. Demo rear wall of Sanders Conference Room
 - c. Construct two (2) new closets at rear of Sanders Conference Room – using existing closet doors and frames if possible
 - d. Construct new walls at rear of Sanders Conference Room
 - e. Install new door into Sanders Conference Room – to match existing doors
 - f. Supply and install new RCB to match
 - g. Provide dust barriers and carpet protection
 - h. Painting as needed
 - i. Sheetrock as needed
 - 7.) HVAC
 - a. Move T-Stat and re-route ductwork to supply Sanders Conference Room. Balance system where work occurs.
 - 8.) Window Treatment
 - a. Room darkening window treatment for Option B phase or total job
- B.) PLEASE NOTE: THE NCEL RESERVES THE RIGHT TO AWARD THIS PROJECT AS A COMPLETE EXPANSION PROJECT OR AWARD IN TWO PHASES DEPENDING ON TOTAL COST:**
- a. **OPTION A - FRONT OF CONFERENCE ROOM**
 - b. **OPTION B - BACK OF CONFERENCE ROOM**

II. SCOPE OF WORK

Contractor responsibilities:

- 1.) Contractor shall provide all labor, materials, equipment, and supervision to renovate and expand the size of the Sanders Conference Room.
- 2.) Ensure electrical work is performed by a NC State Licensed Electrician.
- 3.) Contractor will be responsible for relocating furniture out of the work area and back into the work area after all work has been completed. Storage area available on-site.
- 4.) All work will take place during normal business hours during the work week unless unforeseen circumstances make it not possible. A 48-hour notice must be given to Tarver Sammons at 919-301-3353 of after hours and/or weekend work.
- 5.) All tools and materials will be stored in the Sanders Conference Room after hours.
- 6.) All work shall be performed in an organized professional manner.
- 7.) All work shall be performed in compliance with OSHA regulations utilizing all necessary safety precautions to ensure a safe working environment.
- 8.) Contractor shall protect interior work area, etc. during construction.
- 9.) Contractor shall repair any damage caused by construction in a manner that eliminates evidence of patching or refinishing. Any damage caused by the contractor not repaired will be deducted from the contractor's final invoice.
- 10.) Contractor shall remove and dispose off-site all debris generated from the job. NCEL dumpsters cannot be used.
- 11.) All work shall be done in accordance with Local, State and Federal Building Codes (Newest Edition).
- 12.) Provide **all** permits

III. WORK SITE

NCEL Headquarters
Sanders Conference Room
2100 Yonkers Road
Raleigh, NC 27604

Access to the building WILL BE LIMITED to the Sanders Conference Room and restrooms only.

IV. REQUIREMENTS

Bidder shall furnish with their bid the following information as it relates to the general contractor:

- 1.) Include your proposed work schedule based on the timeframe provided
- 2.) Include a copy of a W-9 Form (rev. 10/07)
- 3.) Include all addenda (if issued)
- 4.) Include reference letters or three (3) references
- 5.) Raleigh Business License
- 6.) NC General Contracting License (if applicable)
- 7.) Include your insurance certificate including Worker's Compensation

INSTRUCTIONS FOR QUOTES

1. **READ, REVIEW AND COMPLY:** It shall be the offeror's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **NOTICE TO OFFERORS:** All quotes are subject to the provisions of the Instructions for Quotes, special terms and conditions specific to this Request for Quotes, the specifications, and the North Carolina General Contract Terms and Conditions. NC Education Lottery objects to and will not evaluate or consider any additional terms and conditions submitted with a quote. This applies to any language appearing in or attached to the document as part of the offeror's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.**
By execution and delivery of this document, the offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
3. **DEFINITIONS:**
 - **OFFEROR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a Request for Quotes.
 - **TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities only.
 - **STATEWIDE TERM CONTRACT:** A Term Contract for all agencies, unless exempted by statute, rule, or special term and condition specific to this quote.
 - **AGENCY SPECIFIC TERM CONTRACT:** A Term Contract for a specific agency.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of a commodity not covered by a term contract.
4. **EXECUTION:** Failure to sign under EXECUTION section will render quote invalid.
5. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, the offer shall be valid for 45 days from the date of quote opening. Preference may be given to quotes allowing not less than 45 days for consideration and acceptance.
6. **PROMPT PAYMENT DISCOUNTS:** Offerors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
7. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and offeror will be held responsible therefore. Deviations shall be explained in detail. **The offeror shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable**
8. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this quote, the order of precedence shall be (1) special terms and conditions specific to this quote, (2) specifications, (3) North Carolina General Contract Terms and Conditions, and (4) Instructions for Quotes.
9. **INFORMATION AND DESCRIPTIVE LITERATURE:** Offeror is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this quote, each offeror must submit with their quote sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous offer will not satisfy this provision. Quotes which do not comply with these requirements will be subject to rejection.
10. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective.
We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use.
Companies are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
11. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum. The offeror is cautioned that the requirements of this quote can be altered only by written addendum and that verbal communications from whatever source are of no effect.
12. **ACCEPTANCE AND REJECTION:** The NC Education Lottery reserves the right to reject any and all quotes, to waive any informality in quotes and, unless otherwise specified by the offeror, to accept any item in the quote. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
13. **REFERENCES:** NC Education Lottery reserves the right to require a list of users of the exact item offered. NC Education Lottery may contact these users to determine acceptability of the quote. Such information may be considered in the evaluation of the quote.

14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, NC Education Lottery invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
15. **AWARD OF CONTRACT:** Qualified quotes will be evaluated and acceptance may be made of the lowest and best quote most advantageous to the NC Education Lottery as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the offerors; the substantial conformity with the specifications and other conditions set forth in the quote; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the NC Education Lottery to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the NC Education Lottery or the offeror, the NC Education Lottery reserves the right to accept any item or group of items on a multi-item quote.
In addition, on TERM CONTRACTS, the NC Education Lottery reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by the NC Education Lottery to be pertinent or peculiar to the purchase in question.
16. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, the NC Education Lottery will consider keeping trade secrets which the offeror does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the offeror. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.
17. **TAXES:**
 - **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.
 - **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
18. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the offeror's expense. Request for the return of samples must be made within 10 days following date of quote opening. Otherwise the samples will become NC Education Lottery property. Each individual sample must be labeled with the offeror's name, quote number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
19. **PROTEST PROCEDURES:** **BY SUBMITTING BID, VENDOR ACKNOWLEDGES THEIR ACCEPTANCE OF THE NCEL'S VENDOR DISPUTE RESOLUTION WHICH WILL SUPERCEDE ANY STATE TERMS & CONDITIONS SHOULD A CONFLICT ARISE.** (See Vendor Information at <http://lottery.nc.gov/> for policy.)
20. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

1. **DEFAULT AND PERFORMANCE BOND:** In case of default by the contractor, NC Education Lottery may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby. NC Education Lottery reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to NC Education Lottery.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State.

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business with the State.

2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. NC Education Lottery reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.

3. **AVAILABILITY OF FUNDS:** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL THE STATE OF NORTH CAROLINA, ITS GENERAL FUND OR ANY OF ITS AGENCIES OR POLITICAL SUBDIVISIONS, EXCEPT THE NCEL, BE RESPONSIBLE OR LIABLE AS A RESULT OF THIS AGREEMENT OR ANY LIABILITY CREATED HEREBY OR ARISING HEREUNDER. NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT PUNITIVE OR SPECIAL DAMAGES UNDER ANY CIRCUMSTANCES.

4. **TAXES:** Any applicable taxes shall be invoiced as a separate item.

G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

5. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.

6. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.

7. **INSPECTION AT CONTRACTOR'S SITE:** NC Education Lottery reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for NC Education Lottery determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.

8. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.

9. **AFFIRMATIVE ACTION:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.

10. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

11. **STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

12. **PATENT:** The contractor shall hold and save NC Education Lottery, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.
13. **ADVERTISING:** Contractor agrees not to use the existence of this contract or the name of the State of North Carolina as part of any commercial advertising.
14. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.
15. **ASSIGNMENT:** No assignment of the contractor's obligations nor the contractor's right to receive payment hereunder shall be permitted.
However, upon written request approved by the issuing purchasing authority and solely as a convenience to the contractor, NC Education Lottery may:
a. Forward the contractor's payment check directly to any person or entity designated by the contractor, and
b. Include any person or entity designated by contractor as a joint payee on the contractor's payment check.
In no event shall such approval and action obligate the State to anyone other than the contractor and the contractor shall remain responsible for fulfillment of all contract obligations.
16. **INSURANCE:**
COVERAGE - During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:
a. **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of contractor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.
b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.
REQUIREMENTS: Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.
17. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.
18. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
19. **ELECTRONIC PROCUREMENT (APPLIES TO ALL CONTRACTS THAT INCLUDE E-PROCUREMENT AND ARE IDENTIFIED AS SUCH IN THE BODY OF THE SOLICITATION DOCUMENT):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The contractor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. There are no additional fees or charges to the contractor for the services rendered by the Supplier Manager under this contract. Contractor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the contractor's failure to perform or comply with specifications or requirements of the contract.

Contractor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Contractor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, contractor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Contractor. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate contractor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a contractor is a corporation, partnership or other legal entity, then the contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges by such employees. Contractor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the contractor's account, contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

20. **ELECTRONIC PROCUREMENT (APPLIES ONLY TO STATEWIDE TERM CONTRACTS):** Within ten (10) calendar days of notice, the contractor shall provide supplier information, contract pricing and other product-related information requested by the State or the Supplier Manager. This information shall include such information as contractor name, SKU, brand/manufacture, product name and a brief description, unit of measure, price, and other similar information properly requested by the State or the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the contractor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to use, reproduce, transmit, distribute and publicly display this information. In addition, for the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display contractor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with contractor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the contractor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

If the contractor is not the manufacturer, then it shall be the contractor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the contractor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.

CONTRACTOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ITS AUTHORIZED RESELLERS IN THE EVENT THAT THE AUTHORIZED RESELLER(S) DEFAULTS.

21. **CANCELLATION (TERM CONTRACTS ONLY):** All contract obligations shall prevail for at least 90 days after the effective date of the contract. After that period, in addition to the provisions of the paragraph entitled Price Adjustments, for the protection of both parties, this contract may be canceled in whole or in part by either party by giving 30 days prior notice in writing to the other party.
22. **QUANTITIES (TERM CONTRACTS ONLY):** The award of a term contract neither implies nor guarantees any minimum or maximum purchases thereunder.
23. **PRICE ADJUSTMENTS (TERM CONTRACTS ONLY):** Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the contractor to other customers.
- a. **Notification:** Must be given to the NC Education Lottery, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
- b. **Decreases:** The NC Education Lottery shall receive full proportionate benefit immediately at any time during the contract period.

- c. **Increases:** All prices shall be firm against any increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with the NC Education Lottery reserving the right to accept or reject the increase, or cancel the contract. Such action by the NC Education Lottery shall occur not later than 15 days after the receipt by the NC Education Lottery of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.
- d. **Invoices:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.

5/02/2005